REMARKS

The Amendments

The specification is amended to address the objection regarding the correct use of trademarks. Claim 6 is amended to avoid duplication with claim 5. Claim 24 is canceled since it is redundant. Claims 63 and 65 are amended to clarify that the compositions recited therein are also inhalable powders. The amendments do not narrow the scope of the claims.

Applicants reserve the right to file one or more continuing and/or divisional applications directed to any subject matter disclosed in the application which has been canceled by any of the above amendments.

The Restriction Requirement

The issue of the restriction requirement is believed to be moot. All the claims are directed to inhalable powder compositions which are propellant-free.

The Rejection under 35 U.S.C. §103

The rejection of claims 1, 3-10, 15-39 and 63-66 under 35 U.S.C. §103, as being obvious over Magee (US Pub. No. 2002/0111495), is respectfully traversed.

Magee is not prior art to the instant application. Applicants claim priority to two US provisional applications. Applicants believe these provisional applications support the current claims and that priority is established. Assuming the PTO confirms that the priority is established, applicants have an established priority date of December 21, 2000, at the latest. The effective 35 U.S.C. §102(e) date of Magee is January 31, 2001. The Magee patent on its face recites three provisional applications as "Related Applications." These applications have

filing dates of Oct. 21, 1998; April 4, 1997; and January 31, 2001. The Magee non-provisional application which became the cited publication was filed on January 31, 2002. Magee is not entitled to claim priority in the published application to the two earlier filed provisional applications since they were not filed within one year of the non-provisional filing. As a result, these earlier provisional filing dates cannot be relied upon as the 35 U.S.C. §102(e) prior art date. Only the January 31, 2001, date of Magee can be relied upon and it is after applicants' priority date.

Since Magee is not prior art, the rejection should be withdrawn.

The Obviousness-type Double Patenting Rejection

The obviousness-type double patenting rejection of claim 1 over claim 1 of Dreschsel (U.S. Patent No. 6,890,517) is overcome by the terminal disclaimer filed herewith.

The Provisional Obviousness-type Double Patenting Rejections

The provisional obviousness-type double patenting rejections over each of copending application nos. 11/006,940; 11/068,134; 11/109,094; 11/169,876; 11/267,354; and, 11/424,244; are respectfully traversed.

Applicants reserve the right to further traverse these provisional rejections on the basis that distinct subject matter is being claimed (or that the claims may change to make them distinct). However, applicants submit that these provisional rejections should be withdrawn because all of these applications were filed after the instant application. The instant application is the first filed of all of these applications. In accordance with MPEP §804(I)(B)(1) "the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.

A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application permitted to issue." Since all the other rejections are believed to be overcome, the provisional obviousness-type double patenting rejections based on these later-filed applications should be withdrawn.

It is submitted that the claims are in condition for allowance. However, the Examiner is kindly invited to contact the undersigned to discuss any unresolved matters.

Respectfully submitted,

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